Filed 8/26/19 In re S.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.S., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.S., Defendant and Appellant.	E071498 (Super.Ct.No. J277061) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant J.S. (mother) challenges a juvenile court's jurisdictional findings and disposition order with regard to her son, S.S (the child). She also argues the court erred in denying her reunification services pursuant to Welfare and Institutions Code[1] section 361.5, subdivision (b)(10) and (b)(11), since she made reasonable efforts to treat the problems that led to the removal of her six other children. We affirm.

PROCEDURAL BACKGROUND

On July 23, 2018, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition on behalf of the child, who was seven months old at the time. The petition alleged that the child came within section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling). The petition included the allegations that mother was arrested on July 11, 2018, for child endangerment, and she had a substance abuse problem, a substantial criminal history, and an untreated mental illness. The petition also alleged that her parental rights were terminated for six of the child's half siblings, and she had not yet addressed the issues that led to the termination of parental rights. The petition further alleged that the child was exposed to domestic violence between her and the child's father, A.S. (father).[2]

The social worker filed a detention report stating that, on July 13, 2018, she received a referral stating that the police attempted to detain mother regarding "some

[1] All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

[2] Father is not a party to this appeal. Therefore, although the petition contained allegations regarding father, they will not be discussed in this opinion.

crimes she committed." Mother grabbed the child and fled on foot. She trespassed by going into a stranger's home, ran through traffic, and refused to give the child to the police. At one point, she almost had a chokehold on the child, as she tried to hold him away from the police. Mother was arrested for child endangerment, as well as other felony charges. The social worker reported that she was currently facing eight felony charges, including willfully resisting a police officer and vandalism. The child was placed with a maternal aunt, C.M.

At the detention hearing on July 24, 2018, mother was not present, but was in custody in county jail. The court detained the child in foster care and continued the matter for a further detention hearing. The court held a hearing the following day, with mother present. It ordered CFS to provide services pending the development of a case plan.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on August 13, 2018, and recommended the court find all the allegations true, except the allegations that the child was exposed to domestic violence, and one allegation concerning father. The social worker recommended that the court deny reunification services to mother since she had her parental rights terminated for six other children and had not made the life changes necessary to ensure the safety and well-being of the child. The social worker reported that mother was clearly failing to take responsibility for her actions that led to the current case, as well as the prior dependencies. Mother continued to struggle with substance abuse, mental health issues, and engaging in criminal activity.

The court held a jurisdiction/disposition hearing on August 15, 2018. It set the matter for trial and mediation, at mother's request.

A mediation hearing was held on October 9, 2018, as scheduled. Mother failed to appear.

The court held a contested jurisdiction/disposition hearing on October 12, 2018. Mother testified at the hearing and said that when she was arrested, she left the child with her sister, C.M. She said she was arrested for several felonies, but was only charged with child endangerment. Mother also said she had served some time in custody and was currently on probation. When asked if she had a history of substance abuse, she said no. When asked if she had ever been treated for a mental illness, she said she started on medication after one of her daughters was taken by Child Protective Services. She said the court ordered her to take medication for her anger and depression, even though the doctors said she did not need it. She said that prior to that, she did not have any mental problems and was not on any medication.

The social worker also testified and said the child was placed with the maternal aunt on an emergency basis, before she was approved. However, the child was removed from her after it was discovered that she had a criminal history, including willful cruelty and drug charges. He was then placed in a foster home. When asked if the social worker offered mother predisposition services, the social worker said mother needed to sign a consent form in order to receive referrals for services; however, she refused to sign the consent. The social worker further testified that mother had not provided any evidence to her that she received treatment for her substance abuse issues, that she was currently

under the care of a physician, that she was currently receiving mental health counseling, or any documentation from a psychiatrist indicating she did not need psychotropic medication.

The court found that the child came within the provisions of section 300, subdivisions (b) and (j). It found true the allegations that the child was at a substantial risk of harm because mother was arrested on July 11, 2018, for child endangerment, she had a substantial criminal history, and she had an untreated mental illness. The court also found true the allegations that mother's parental rights were terminated for the child's half siblings—J.W., K.M.H., K.L.H., S.C., C.M., and J.C.—and she had not yet addressed the issues that led to the termination of parental rights. It further found that mother appeared to have a long-standing, untreated mental health issue, but refused to acknowledge it and take medication, which put her children at risk. The court noted that mother had multiple prior psychological and psychiatric evaluations, and she admitted that she was not currently taking medication and was apparently not seeking any treatment.

The court then found by clear and convincing evidence that section 361.5, subdivision (b)(10) and (b)(11), applied due to mother's criminal activity and mental health issues. It noted that mother had not been medication compliant for years, and in the instant case, CFS attempted to offer her services but she refused to sign the consent forms. Thus, the court found that her parental rights as to the child's half siblings were terminated, and she had not made subsequent reasonable efforts to treat those issues. It

declared the child a dependent, removed him from mother's (and father's) custody, and placed him in CFS custody.

That same day, mother filed a notice of appeal challenging the denial of reunification services and the removal of the child.

ANALYSIS

I. The Court Properly Took Jurisdiction of the Child

Mother argues there was insufficient evidence to support the juvenile court's jurisdictional findings under section 300, subdivision (b), that the child had suffered, or there was a substantial risk he would suffer, serious physical harm or illness due to mother's criminal history and untreated mental illness. She contends there was no evidence that her mental health issues posed a current risk of harm at the time of the jurisdiction/disposition hearing, since there was no evidence she continued to suffer from mental illness or required psychotropic medication. She similarly claims her criminal history did not pose a current risk of harm at the time of the hearing. We conclude that the court properly took jurisdiction of the child.

B. *The Merits of Mother's Claim Should Be Addressed*

At the outset, CFS points out that review on the merits is a waste of judicial resources because the jurisdiction would still be upheld on the unchallenged allegations. " 'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the [trial] court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In

such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' " (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) However, generally this court "will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding" serves as the basis for dispositional orders that are also challenged on appeal, or could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings. (*Ibid*.)

Here, there are other jurisdiction findings the court found true that mother is not challenging. Thus, jurisdiction would be upheld, regardless of the results of this appeal. Nonetheless, we will consider the merits of this appeal since mother is also challenging the court's dispositional orders.

C. *The Evidence Was Sufficient*

Section 300, subdivision (b), provides that the juvenile court may adjudge a child a dependent of the juvenile court when the child has suffered, or there is a substantial risk that the child will suffer, serious harm or illness "as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or . . . by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." "The standard of proof required in a section 300 dependency hearing is the preponderance of evidence." (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 168.)

"The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence

to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citations.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]" (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333-1334 (*Christopher L.*).)

The petition here alleged that mother had an "untreated mental illness which impairs her ability to provide adequate care, supervision and protection for [the child]." Mother claims she did not have any mental health symptoms and was not prescribed medication by her doctor. However, the evidence showed that she had a long-standing mental health illness, and she had not been medication compliant. In November 2006, Dr. Kenneth Meyer assessed her and found that she "suffered from a personality disorder consistent with a psychotic disorder or other severe disorder, and with passive-aggressive and paranoid personality disorder." He explained that her disorder was "characterized as [] passive aggressive, schizotypal, and paranoid," that she had "thought and delusional disorders," and that "without medication, she hears voices." In 2006, as part of her reunification plan in a prior dependency, mother was required to complete psychotherapy and be medication compliant as a result of her bipolar and schizophrenic disorder. However, she reportedly failed to comply with the court's orders and continued to suffer

from symptoms related to her disorder. Mother self-reported that she was unwilling to take her medication and was no longer participating in mental health treatment.

In the 2011 dependency involving mother's son, C.M., the social worker reported that mother's mental health issues continued to be the reason CFS was involved. At that time, mother was on felony probation for child abduction, which she committed when CFS was attempting to detain her daughter, S.C. Her case was being handled by the Mental Health Unit. She reported that she was under the care of a doctor in the Department of Behavioral Health, and she had been prescribed Risperdal.

In the instant case, the social worker interviewed mother in August 2018, and mother admitted she was diagnosed with schizoaffective disorder and was prescribed Risperdal about eight months prior. She said she did not take the medication because she was pregnant at the time, and then simply decided not to take it because she was not having any issues and "felt fine." However, the evidence showed that mother had significant and continuing mental health issues, which would impair her ability to care for the child, despite how she was "feeling."

The petition here additionally alleged that "mother [had] a substantial criminal history which include[d] but [was] not limited to arrest for being a felon in possession of firearm, battery on a peace office[r] and child neglect, which place[d] the child . . . at substantial risk of physical harm and/or further abuse and neglect." The evidence showed that she had an extensive criminal history dating back to 2005. Her charges/convictions include child endangerment (Pen. Code, § 273a, subd. (a)), failure to provide for a child (Pen. Code, § 270), being a felon in possession of a firearm (Pen. Code, § 29800,

subd. (a)), willfully resisting an officer (Pen. Code, § 148, subd. (a)(1)), vandalism (Pen. Code, § 594, subd. (a)), shoplifting (Pen. Code, § 459.5) receiving stolen property (Pen. Code, § 496, subd. (a)), larceny (Pen. Code, § 484g), and battery on a police officer (Pen. Code, § 243, subd. (b)).

Mother argues that her criminal history did not pose a risk of harm to the child. She specifically claims that her most recent arrests did not indicate a propensity for violence, her charges for battery were too far removed, and the current incident with the child was "an isolated episode with police based on a misunderstanding." We conclude that her criminal history did pose a risk, particularly in light of her history of failure to provide for a child. (Pen. Code, § 270.) As to the current incident of child endangerment, mother was trying to evade the police when she grabbed the child and fled on foot. She ran through traffic, and she refused to give the child to the police. At one point, she almost had a chokehold on the child as she tried to hold him away from the police. She claims she did not believe they were police officers, so she fled. Regardless of her claimed reason, mother's actions posed a risk of harm to the child.

Viewing the evidence in the light most favorable to the juvenile court's order, as we must, we conclude that there was substantial evidence to support the court's jurisdictional findings. (*Christopher L.*, *supra*, 143 Cal.App.4th at p. 1333.) Thus, the court properly took jurisdiction of the child.

II. The Juvenile Court Properly Removed the Child From Mother's Custody

Mother next claims the evidence was insufficient to support the court's order removing the child from her custody, since she did not pose a risk to him and was able to

properly care for him. The record amply supports the court's decision to remove the child from mother's custody. There were legitimate concerns for his physical well-being.

"The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher H.*).)

In support of her claim, mother asserts that she was able to make appropriate arrangements for the child when she was incarcerated. She points out that she gave the child to the maternal aunt when she was arrested. However, the maternal aunt was not an appropriate caretaker. The child was removed from the aunt's care after it was discovered that she had a criminal history, which included willful cruelty and drug charges.

Mother further asserts that she was able to properly care for the child herself, and she points out that she had "obtained her own residence with furniture and food for the child." However, just because she had food and a place for him to live does not mean the court erred in removing him from her custody. In 2009, three of mother's children were removed when she was arrested for willful failure to provide for them. (Pen. Code, § 270.) The police did a forced entry into her home and found it infested with roaches and lacking food. The children were found sleeping on the cold tile floor.

Furthermore, the social worker here had concerns that the child was not being fed or cared for appropriately as evidenced by his low weight and small head circumference.

He was at 6.5 percent for weight and 16.5 percent for head circumference. The social worker opined that the current case resembled mother's previous involvement with CFS, in which she lost her parental rights for six children. Her parental rights were terminated for four of her children in 2011, another child in 2013, and another one in 2017. The social worker observed that mother was failing to take responsibility for her actions that led to the prior, as well as current, CFS involvement. She continued to struggle with substance abuse, mental health issues, and being engaged in criminal activity. The social worker concluded that mother had not made the life changes necessary to ensure the safety and well-being of the child.

In light of the evidence, we conclude the court did not abuse its discretion in removing the child from mother's custody. (*Christopher H., supra,* 50 Cal.App.4th at p. 1006.)

III. Substantial Evidence Supports the Court's Order Denying Mother Reunification Services

Mother argues there was insufficient evidence to support the court's order denying her reunification services under section 361.5, subdivision (b)(10) and (b)(11).[3] We disagree.

" 'As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of

[3] Although the court found that section 361.5, subdivision (b)(10) and (b)(11), applied to mother's mental health issues and criminal activity, its explanation focused on her untreated mental health issues. Therefore, we will similarly focus our discussion on her mental health issues.

custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]' [Citations.] Section 361.5, subdivision (b) sets forth certain exceptions—also called reunification bypass provisions—to this 'general mandate of providing reunification services.' [Citations.] [¶] Section 361.5, subdivision (b) 'reflects the Legislature's desire to provide services to parents only where those services will facilitate the return of children to parental custody.' [Citations.] When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be ' "an unwise use of governmental resources." ' [Citation.]" (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.)

Under section 361.5, subdivision (b)(10) and (b)(11), the court may deny reunification services to a parent who has failed to reunify with the child's sibling or half sibling or whose parental rights to the child's sibling or half sibling were terminated. Denial of services under these provisions requires the court to find that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent." (§ 361.5, subd. (b)(10) & (b)(11).) An order denying services is reviewed for substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 915 (*R.T.*).) " 'In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences

indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.' " (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.)

Mother does not dispute that her parental rights to six other children were terminated. Rather, she argues that the court erred in denying her reunification services since it improperly shifted the burden of proof to her "to disprove that she had mental health symptoms or required psychotropic medications." She further contends she made reasonable efforts to treat the problems that led to the removal and termination of parental rights of the child's half siblings by simply claiming she no longer had psychiatric symptoms, and her psychiatrist no longer prescribed any psychotropic medication. Mother also asserts that CFS offered no current evidence that she had a mental illness or was still required to take psychotropic medication.

Contrary to mother's claim, the record does not indicate that the court placed the burden on her to "disprove" she had mental health issues or required psychotropic medication. Rather, the court found that services were previously terminated, and mother had significant mental health issues which caused behaviors that placed her children at risk. The court also found that parental rights were terminated as to the child's half siblings, and mother had not made subsequent reasonable efforts to treat those issues. There was sufficient evidence to support the court's findings.

As previously stated, in 2006, Dr. Meyer assessed mother and concluded that she had a long-standing psychological issues. (See *Ante*, § I.) In 2009, the social worker in

the case regarding three of her children reported that mother suffered from a severe mental health illness that prevented her from being able to provide adequate care on a consistent basis. The social worker noted the psychological evaluation performed in 2006 stated that mother needed to remain in psychotherapy and comply with her prescribed medication in order to improve her parenting. However, mother had failed to continue receiving mental health treatment, psychotherapy, and psychotropic medication. Moreover, mother informed the social worker that she would not take psychotropic medication and would not participate in counseling services.

In 2011, the social worker in the case regarding another one of mother's children (C.M.), reported that mother had been diagnosed with bipolar disorder and schizophrenia and had not been medicine compliant since 2006. The social worker reported that mother previously failed to participate in and complete the services to address her mental health issues and thereby failed to reunify with J.W., K.M.H., K.L.H., and S.C. The court denied reunification services, pursuant to section 361.5, subdivision (b)(10) and (b)(11). (See *In re C.M.* (Feb. 3, 2012, E053059) [nonpub. opn.].)[4]

In the 2016 dependency case, mother's son J.S. was admitted to the hospital for pneumonia and difficulty breathing. Mother became hostile and aggressive and refused to allow the hospital staff to administer medication, oxygen, or other treatment. She yelled at the staff and tried to take the oxygen mask off of J.S., and the staff had to call

[4] By order filed on April 9, 2019, this court granted respondent's request to take judicial notice of our prior opinions in *In re C.M.*, *supra*, E053059, and *In re J.W.* (Oct. 5, 2011, E052806) [nonpub.opn.].) (Evid. Code, §§ 452, subd. (d), 459.)

security. Accordingly, the court in that case found true the allegation that mother had a history of mental health problems that impaired her ability to provide adequate care and supervision for J.S. The court eventually terminated mother's parental rights and ordered adoption as the permanent plan.

There is no evidence in the record demonstrating that mother has since made reasonable efforts to address her long-standing mental health issues. In the instant case, the social worker reported that mother refused to sign a consent form, even though she was informed that it was needed to refer her to services. Furthermore, at the contested jurisdiction/disposition hearing, the social worker testified that mother had not provided any evidence she was currently receiving mental health counseling, or any documentation from a psychiatrist indicating she did not need psychotropic medication.

The court here correctly noted that there were "years of cases worth that show[] mother simply isn't agreeable with psychotropic medication." It specifically pointed out that mother's refusal to sign the consent form to accept services was "consistent with the behavior that has spanned the lifetime of the siblings." Moreover, she was not provided with services in her last two dependency cases, and there was no evidence she had made reasonable efforts on her own to treat her issues. To the contrary, the evidence demonstrated that she was unwilling to address them, as she refused to consent to services when they were offered. We note mother's claims that she no longer had psychiatric symptoms, and her psychiatrist no longer prescribed psychotropic medication. However, these are simply self-serving claims which have no apparent support in the record.

Viewing mother's history in its totality, we conclude there is substantial evidence to support the court's finding regarding lack of subsequent reasonable effort. (See *R.T. v. Superior Court*, *supra*, 202 Cal.App.4th at p. 915.)

Accordingly, the court properly denied reunification services pursuant to section 361.5, subdivision (b)(10) and (b)(11).

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.